IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.808/2006

Judgment reserved:31.7.2007.

Date of Decision : August 2,2007.

Bhag Chand …Petitioner.

-versus-

Himachal Gramin Bank. …Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting? Yes.

For the Petitioner. Mr. Surender Sharma, Advocate.

For the Respondent Mrs. Devyani Sharma, Advocate.

Sanjay Karol, J.

By way of the present writ petition, the petitioner has assailed the order of the Disciplinary Authority dated 15.10.2004, (*Annexure PK*), imposing the penalty of **"**removal from service, which shall not be a disqualification for future employment**"** and also the order dated 29.12.2005 (Annexure-PP) passed by the Appellate Authority of the respondent Bank, reducing the penalty to "Compulsory Retirement: in terms of Himachal Gramin Bank Officers and Employees Service Regulations, 2001 under Regulation No.38(I)(b)(iii) of Chapter-IV of the said regulations".

For various acts of misconduct in discharge of his duties as OJM-I at Branch Office, Haripur, Kullu, H.P. on 14.12.2002 petitioner was served with a charge sheet by the respondent Bank. The statement of Articles of Charges are as under :-

Article No.1 - He maneuvered and manipulated to utilize the amount of loans of the borrowers by forging the signatures of the borrowers on cheques and misappropriated the money. He also maneuvered and utilized the funds

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Whether the reporters of the Local Newspapers may be allowed to see the Judgment?

for his personal benefits. Thus, his acts are to jeopardize the interest of Bank by getting the loan documents signed under the behest of obtaining witnesses.

Article No.2- In utter disregard to his chair and position he sanctioned and disbursed loans against bills from unauthorized suppliers of goods and such payments of bills were not adjusted into the irregular loan accounts of these suppliers, thus Sh. Bhag Chand has acted against the interest of the bank,. Revealing his connivance with suppliers to evade recovery of the bank's funds.

Article No.3- He performed his duties carelessly and recklessly as he sanctioned loans without observing proper safeguards, guidelines and procedures of the Bank and advanced loans to the same borrowers or to their spouses when the previous loans already advanced to the same borrowers or to their spouses were highly irregular. Thus, he has failed to ensure proper pre-sanction appraisal and post-sanction follow-up in a large number of loan accounts and acted in a manner prejudicial to the interest of bank.

Article No.4- His acts and conduct are alleged to be unbecoming of an officer, as, while working as incumbent incharge of Gadsa branch, he mis-utilized his official position and advanced accommodation loans to the different family members of a person who was employed by him as his domestic servant. Consequently, these loans turned highly irregular and no security was created out of these loans. He has also indulged in receiving undue favours from the borrowers for his personal benefits. His such unbecoming behaviour of receiving undue gratifications from customers has damaged the reputation of the bank in the eyes of customers/public.

Article No.5- Sh. Bhag Chand did not discharge his duties diligently, honestly and acted against the laid down instructions of the Bank. He acted otherwise than in his best judgment in performance of his official duties. He has sanctioned loans very far away from the branch without keeping the control aspect over these advances. Resultantly, such advances have

become sticky causing heavy loss to the bank. Further, he has grossly committed irregularities of very serious nature in sanctioning of loans. His such acts have put the huge funds of Bank in jeopardy.

Supplementary charge sheet dated 21.4.2003 was also issued.

The statement of imputation in respect of the Articles of Charge was also duly supplied to the petitioner and is on record. Petitioner responded to the same in terms of reply dated 30.12.2002 and the Inquiry Officer after considering the entire material on record, including the statement of the witnesses and the documents held him guilty of misconduct of all the charges.

In terms of show cause notice dated 27.5.2004, petitioner was given fifteen days time to respond as to why the penalty of dismissal from the service be not imposed on him keeping in view the gravity of lapses committed by him to which he responded in terms of reply dated 8.6.2004 and after considering the entire material on record vide impugned order dated 15.10.2004, the Disciplinary Authority in accordance with the Himachal Gramin Bank Officers and Employees service Regulations,2001 (hereinafter referred to as the '**Regulations')** imposed the penalty of "REMOVAL FROM BANK SERVICE WHICH SHALL NOT BE A DISQUALIFICATION FOR FUTURE EMPLOYMENT"

Aggrieved by the same, petitioner preferred an appeal and the Appellate Authority while taking sympathetic view, reduced his penalty to that of compulsory retirementunder Regulation No.38(1)(b)(v) of Chapter-IV.

The learned counsel for petitioner has argued that the decision of the Disciplinary Authority and that of the Appellate Authority is perverse as the material placed by the petitioner was not considered at all and with proper application of mind and careful perusal of the material it can be seen that the petitioner can be absolved of all the charges of misconduct. He has

argued that in any case the punishment is disproportionate to the alleged misconduct and therefore, the Court should interfere with the same;

Regulation 38(b) provides for various penalties and dismissal being last of them the respondents ought to have imposed the lesser penalties, as provided for under Regulation No.38(1)(b)(v) of Chapter-IV rather than straightaway resorting to the penalty of compulsory retirement. He has relied upon decisions' in ***Union of India vs. Sanjay Kumar Jain,*** 2004 (6) SCC 713 **and** ***R.P. Bhatt vs. Union of India and others,*** 1986(2) SCC 651.

Per contra, learned counsel for the respondent has submitted that the petitioner has been given a fair hearing during the entire disciplinary proceedings. Fresh documents were placed by the petitioner before the appellate authority and could not be looked into. She has taken pains to contend that even though the Managing Director of the respondent Bank was member of Appellate Authority, however, as is evident from the material on record, he refrained from participating in any of the proceedings. The conduct of the petitioner is such that he does not deserve any leniency as he has jeopardized the interest of the bank. In fact the respondent bank has already taken a lenient view by partly allowing his appeal and imposing a lesser penalty for his proven misconduct.

I proceed to decided as under.

In ***R.S. Saini*** vs. ***State of Punjab and others*****,** (1999) 8 SCC 90, it has been held as under:-

> **" High Court while exercising writ jurisdiction does not reverse a finding of inquiring authority on the ground that evidence adduced before it is insufficient. If there is some evidence to reasonably support conclusions of inquiring authority, it is not the function of the court to review evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate its findings. Adequacy or reliability of evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.**

> **The inquiring authority based its conclusions on materials available on record and after considering the defence put forth by the appellant. The conclusions have been drawn in a reasonable manner and objectively. These conclusions cannot be termed as perverse or not based on any material, nor it is a case where there has been any non-application of mind on the part of the inquiring authority. The High Court within its limited scope under Article 226 too has looked into the material on the basis of which the inquiring authority had formed its conclusion. There is no fault in the findings of the High Court."**

In **Govt. of A.P. and others** vs. **Mohd. Nasrullah Khan,** (2006)2 SCC 373, it has been held as under:-

> **"The High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.**

It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. (**State of A.P. vs. S. Sree Rama Rao,** reported in AIR 1963 SC 1723).

It is also settled law that this Court would not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the

evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

In case of disciplinary enquiry the technical rules of enquiry have no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct. [***Lalit Popli vs. Canara Bank and others,*** reported in (2003) 3 SCC 583].

In ***Chairman and Managing Director, United Commercial Bank and others*** *vs,.* ***P.C. Kakkar*****,** reported in (2003) 4 SCC 364, it has been held as under:-

> "12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

> "15. …. It needs to emphasis that when a court feels that the punishment is shocking disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law……"

On the issue of punishment being disproportionate to the offence alleged to have been committed by the petitioner, the ratio of law laid down of the apex Court in ***State of UP*** *vs.* ***Sheo Shanker Lal Srivastava and others,*** reported in (2006) 3 SCC 276, is reproduced hereinbelow:-

> "22. It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not

> normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

It is not in dispute that the petitioner was permitted to take all necessary steps as was required under the Rules as also the principles of natural justice were adhered to by affording a fair hearing including supply of the documents, reports, statements of witnesses etc. and also adequate opportunity of examining and cross - examining the witnesses. In the narration of facts, I have already stated the various proceedings and stages which have resulted in passing of the final order by the concerned authorities. The petitioner had been afforded reasonable opportunity and supplied with the entire material relied upon by the Inquiry Officer. The petitioner also availed of the statutory right of making representation against the proposed order of punishment. He was heard and duly represented at all times. With regard to the procedure, there is no infraction of any rules or principles of natural justice at any point of time. It is clear that the principles of audi alteram partem have been fully complied with.

During the course of the hearing the learned counsel for the petitioner has not been able to point out any violation of principles of natural justice at any stage of the proceedings, except for non consideration of new material by the Appellate Authority, which according to him would have absolved the petitioner of the charges.

Learned counsel for the respondent has submitted that during the course of inquiry and petitioners' subsequent temporary posting at the Branch he had tried to influence the parties/witnesses/ complainants and obtained documents in support of his defence which have been placed before the appellate authority. I am in agreement with the learned counsel for the respondent that the same cannot be looked into as there is no justifiable

reason for not having produced the same during the course of the inquiry, before the Inquiry Officer in the inquiry proceedings.

In any case the documents sought to be relied upon by the petitioner at the appellate stage, in my view, would have made no difference for the simple reason that charge is not in relation to an isolated instance of misconduct but a series of acts of omissions and commissions committed over a considerable period of time. The Inquiry Officer has already come to the conclusion that the petitioner has admitted most of the charges during the inquiry proceedings.

Even though the scope of interference by this Court on finding of fact recorded by the Inquiry Officer is limited, however, in order to satisfy the conscience of this Court I have examined in detail the entire material on record to see as to whether the Articles of Charges, the imputations, the evidence and the documents would positively led to the probability of the petitioner's complicity in the alleged misconduct.

I shall now briefly deal with the acts of alleged misconduct and findings of the Enquiry Officer based on the defence of the petitioner.

CHARGE NO.1-(a):

In March, 2002, Petitioner, Bhag Chand, in connivance with one Sh.Yan Chand (Ex. Pradhan of Gram Panchayat & Prop. Of M/s Jagdamba Furniture Industries) got sanctioned a loan of Rs.45,000/- in the name of Sh. Jeetu and instead of disbursing said amount to the borrower paid the same to Jagdamba Furniture Industries. In defence the petitioner relied upon the agreement dated 28.10.2002 whereby Sh. Jeetu agreed to pay the amount to Sh. Yan Chand, which according to the Inquiry Officer was only a device to camouflage the transaction as Sh. Jeetu himself deposed that the loan amount was taken by Sh. Yan Chand, and the petitioner was fully aware of the same. The transaction is of March, 2002 and the Agreement is of October, 2002. Thus, connivance of the petitioner in sanctioning and

disbursing the loan amount in the name of Sh. Jeetu for the purpose of Sh. Yan Chand is established.

CHARGE NO.1-(b):

Petitioner in connivance with Sh. Yan Chand created loans in the name of Fateh Chand and Amar Chand, by getting loan documents signed from these two persons fraudulently and by misrepresenting that they, as witnesses, were signing, the documents of loan pertaining to Shri Yan Chand. The loan of Rs.40,000/- and Rs.30,000/- was disbursed on 14.12.2001 and 18.2.2002. In reply petitioner has admitted the sanctioning of the loan and disbursement of the amount to M/s Jagdamba Furniture Ltd. which is a proprietary concern of Sh. Yan Chand. Based on the deposition of Sh. Fateh Chand (PW2) and Sh. Amar Chand (PW3) and their respective complaints, marked as P-12 and P-3, the Inaquiry Officer held the defence of the petitioner to be sham. The record is clear and it is evident that the petitioner in connivance with Sh. Yan Chand created fake loan accounts and maneuvered to utilize the funds.

CHARGE NO.2.:

In connivance with the suppliers loan amounts were disbursed on the basis of fake bills to persons who were either not authorized or whose account with the bank had turned highly irregular. Irregular payments were made to the suppliers in cash as the same ought to have been credited to the respective irregular CC loan accounts of the suppliers. In reply, the petitioner has admitted the fact that the payment was made in cash and that the account of the suppliers were also irregular and based on the material on record the Inquiry Officer concluded the charge to be proved as the disbursement of the amount to suppliers was contrary to the instructions and against the interest of the bank. There are 14 such borrowers on whose behalf payment has been made to the suppliers who were either not authorized and /or were having irregular accounts with the respondent-Bank.

CHARGE NO.3.:

Petitioner disbursed loans to 19 such persons or their spouses, who were previous borrowers and were having irregular accounts with the bank. From the reply it is evident that not only he has admitted the fact that the disbursement was irregular but has made an attempt to even win over the witnesses and cover up the lapses by contacting them during his temporary posting at the concerned Branch between 30.10.2002 to 13.12.2002. Based on the admission the Inquiry Officer has held the charge to be proved. His defence that the borrowers have subsequently assured him of clearance of the loaned amount and settlement of account in no case would absolve him of his misconduct. The defence of the petitioner that even though the accounts had become irregular, however, there was sufficient movable assets to recover the dues was rightly not accepted. The total amount involved in such transaction is Rs.13,43,716/-.

CHARGE NO.4.:

In order to over come the procedural requirement of furnishing of adequate security a housing loan Petitioner advanced four loans to members of the same family for the purpose of purchase of milch cattle which did not require any security. Further one of the borrowers was employed by the petitioner as a part time domestic servant with an arrangement and promise that the monthly instalment towards the repayment of the said loan would be deposited by the petitioner out of the salary promised to be paid to the borrowers but, however, the same was not done. In response the petitioner has admitted the fact of disbursing the loan without security. The Inquiry Officer, based on the statement of the borrower has found that it was on the asking of the petitioner himself the loan was so applied as no security was required to be furnished on a loan for purchase of milch cattle.

CHARGE NO.4(c).:

Petitioner received certain goods worth Rs.4000/- from the borrower and did not make any payment for the same. The fact that material was received has been admitted, but the Inquiry Officer rightly did not find favour with the defence put forward by the petitioner. The fact that the petitioner was having private transactions with the borrowers of the bank has effected the reputation of the bank as his conduct was contrary to the Rules and Regulations.

CHARGE NO.5(A):

The petitioner regularly financed loans to 22 persons at far off places where it became possible for the bank to exercise due control. That the amount was disbursed is admitted and the Inquiry Officer has held that the loans had become irregular due to difficulty in follow up with the customers. The amount is running into lakhs of rupees. No justification has been given for disbursing the loan to persons at far off places, specially when other banks are available to cater the needs of such persons.

CHARGE NO.5(B):

The bank had instituted suit for recovery of the default amount against Mine Ram, Amar Nath and Tej Singh Pal as their guarantor and during the pendency of the said suit, the petitioner advanced fresh amounts of loan to the guarantor which also become sticky and irregular. This charge has been admitted by the petitioner as has been held by the Inquiry Officer. That the borrowers have sufficient means to repay the amount is no defence.

CHARGE NO.5(C):

The loan amount sanctioned in favour of M/s Ashapuri Stone Crusher was to be disbursed to the supplier for the purchase of plant and machinery. However, contrary to the instructions of the Head Office and terms of sanction the amount was partly disbursed to the borrower's account

and partly to suppliers from whom no quotations were invited and that too without obtaining the margin money of 10% from the borrower in violation of the terms of sanction. This has been admitted by the petitioner. The defence that the borrower has adequate means to repay the amount is untenable in law.

CHARGE NO.5(D):

Petitioner was required to assess the net worth of the borrowers/guarantors through their confidential reports, which he deliberately failed to do so and concealed the true picture because of which the loan accounts of eleven persons became irregular causing huge financial loss to the bank. This is also admitted by the petitioner.

CHARGE NO.5(e):

Disbursement of loans to 12 persons without getting the charges recorded in the revenue record in favour of the Bank. This charge also stands admitted by the petitioner.

CHARGE NO.5(f):

No charge was created with regard to 23 borrowers wherein huge amounts of loans were involved. This charge is also partly admitted by the petitioner.

CHARGE NO.5(G):

In 21 cases two milch cattles were financed in single dose in contravention of the bank guidelines. This charge is also admitted by the petitioner.

CHARGE NO.5(H):

No collateral securities were obtained with regard to four accounts involving huge disbursement of loan amounts which have also been admitted by the petitioner.

Therefore, from the above it is clear that most of the charges have either been admitted by the petitioner or a very weak and feeble defence has been put up which is neither plausible nor acceptable.

In the present case, I am of the view that the Inquiry Officer after examining entire material on record has rightly come to the conclusion that the charges levelled against the petitioner stand proved. I am not required to re-appreciate the evidence as an Appellate Authority. The petitioner was discharging his duties as a trustee and custodian of public money. He has not only abused and misused his position in dealing with the public funds but has taken undue advantages and benefits from the beneficiaries. His conduct is unbecoming of an Officer as he has not only committed breach of Rules and Regulations but has displayed negligence and acted detrimental to the interest of the Bank. His actions are reckless, careless and without due care and caution. As has already been held by the Inquiry Officer, he has received undue favours from the borrowers for his personal benefits which has damaged the reputation of the bank in the eyes of public. The Rules and Regulations, are binding upon the petitioner and violation thereof would amount to misconduct.

It has already come on record that apart from various irregularities as pointed out in the inquiry report, his acts of recklessly financing without adhering to the banking norms has gravely jeopardized the financial interest and health of the bank.

The authorities have rightly rejected the submission of the petitioner that the sanction/disbursement of the loans was for earning income to the bank and that the bank's financial exposure is adequately protected as borrowers/guarantors have sufficient means and assets to repay the same. In the absence of any charge/security, the bank would be forced to litigate for recovery of the same, thus substantially blocking the funds which the bank may put to better use. The said petitioner being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The petitioner was an officer of the Bank and it needs to be emphasized that in

the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and, in particular, the banks officers so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently. (***State Bank of India and others*** *vs.* **Ramesh Dinkar Punde,** (2006) 7 SCC 212). In my view, keeping the seriousness of the proved charges, the respondent has already taken a lenient view of deciding to impose a lesser Penalty. .

The judgments produced by the learned counsel for the petitioner in my view are not applicable. In fact, they are contrary to the submissions made by the learned counsel. The Court in *Sanjay Kumar Jain* (supra), was dealing with the case of interpretation of a proviso. There is no such proviso to Regulation 38. It is clear that any of the penalties provided for can be imposed for the alleged misconduct depending upon the gravity and circumstances of the misconduct. In ***R.P. Bhatt ,*** (supra), the Court was dealing with a case where a statute itself required recording of reasons by the Appellate Authority, which is not the case in hand. In any event, the orders passed by the Disciplinary Authority and the Appellate Authority are well reasoned.

In my view, there is no irregularity, illegality or perversity in the impugned orders warranting interference by this Court in a writ jurisdiction.

The writ petition is dismissed with costs quantified at Rs.5,000/-.

August 2,2007. **(Sanjay Karol)**
Gandhi/ **Judge**